

Before the
POSTAL REGULATORY COMMISSION

Modification of Mail Classification Schedule
Regarding Restricted Delivery
and Pickup on Demand

Docket No. MC2014-44

PUBLIC REPRESENTATIVE'S COMMENTS

(September 29, 2014)

I. INTRODUCTION

This filing is submitted pursuant to the undersigned's designation as Public Representative in this docket and the Commission's request for comments.¹

At issue is a Postal Service notice seeking streamlined "subpart E" treatment for two sets of proposed classification changes. According to the Postal Service, the changes expand access to Restricted Delivery and Pickup on Demand services, and do not involve any price changes. Notice at 1.

The remaining discussion briefly reviews several Commission orders addressing the adoption and implementation of subpart E; describes each of the proposed changes (including the impact on the MCS); presents the Postal Service's rationale for seeking subpart E treatment; and explains the conclusions. For convenience, the subpart E rules appear in an attachment to this filing.

¹ Notice and Order Concerning Minor Classification Change Regarding Restricted Delivery and Pickup on Demand, September 19, 2014 (Order No. 2188). See also Notice of the United States Postal Service of Minor Classification Changes Related to Restricted Delivery and Pickup on Demand Services, September 17, 2014 (Notice).

II. ADOPTION AND IMPLEMENTATION OF SUBPART E

A. Adoption

Subpart E is captioned "Requests Initiated by the Postal Service to Change the Mail Classification Schedule. It is one of six subparts in Part 3020—Product Lists.

Part 3020 was adopted in early November 2007 as part of an extensive rulemaking marking the first phase of the Commission's efforts to develop the system of modern rate regulation envisioned in the Postal Accountability and Enhancement Act (PAEA) of 2006.² The rulemaking also included Part 3010 (Regulation of Rates for Market Dominant Products), which includes price cap regulations, and Part 3015 (Regulation of Rates for Competitive Products).

With respect to Part 3020, the Commission noted in its final order that commenters had correctly inferred that there is a continuum of possible classification changes from those only requiring the Postal Service to inform the Commission of a classification change to those triggering the requirements of 39 U.S.C. 3642. Order No. 43 at 107. It explained:

The rules proposed in subparts B, C, and D establish formal procedures for classification changes triggering the requirements of 39 U.S.C. 3642. For classification changes below this level, the proposed rules [in subpart E] provide the Postal Service with great flexibility to manage Postal Service products, as long as the products conform to the statutory requirements of the PAEA."

Docket No. RM2007-1, Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 107. The Commission added:

² See Docket No. RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 (Order No.4). See also Errata Notice Concerning Order No. 43, October 31, 2007.

The purpose of subpart E is to keep the Mail Classification Schedule up to date when product changes are made below the 39 U.S.C. 3642 level. This facilitates the Commission's maintenance of the product lists and makes it possible for the Commission to undertake its other statutory responsibilities. Subpart E was not intended to provide an avenue for comprehensive pre-implementation review of classification changes. The Commission will provide notice and the opportunity for comment on Mail Classification Schedule changes under subpart E. Comments can be beneficial in assuring that proposals are properly filed under the correct rules, and not inadvertently filed under subpart E. For these limited purposes, it will be sufficient to provide notice of Postal Service submissions under rule 3020.91 on the Commission's Web site and allow a period for public comment on whether the changes are inconsistent with 39 U.S.C. 3642.

Id. at 108.

B. Implementation

As the distinction the Commission drew makes clear, the significance of invoking Subpart E treatment is that it allows the Postal Service to submit minimal support for a proposed classification change; limits the scope of Commission review; and allows the change to be introduced on an expedited basis (by notice with the Commission no later than 15 days prior to the effective date). §§ 39 CFR 3020.90 and 3020.93(a). In this case, the Postal Service has not identified an effective date for either set of changes. It is presumably awaiting Commission action on its Notice.

Subpart B's streamlined approach is consistent with two assumptions. One is that the classification change is minor, limited, or self-explanatory, so a "bare bones" filing suffices because not much explanation is needed and there are no material issues that would impede expeditious review. The other is that the change fits within an

administrative interpretation of the subpart's scope, and the filing provides commensurate support, again with no threat to speedy review.

The administrative interpretation has arisen in the face of questions about exactly what is intended, in rule 3020.91, by the reference to "corrections to product descriptions in the Mail Classification Schedule that do not constitute a proposal to modify the market dominant product list or the competitive product list as defined in §3020.30." A review of several final orders finds that, in practice, Commission has addressed the appropriateness of subpart E jurisdiction on a case-by-case basis. The Commission also has articulated the following standard: if the proposal is not limited to "scriveners' errors," and presents changes that are not merely minor editor corrections, the filing is to include enough information to allow expeditious review.

For example, in Docket No. MC2011-5, the Commission addressed a Postal Service proposal for a classification change affecting the calculation of bundle and pallet charges for Outside County Periodicals pieces in combined mailings of Standard Mail and Periodicals.³ (The Notice included an attachment with proposed MCS revisions.) The Commission characterized the filing category (subpart E, rules 3020.90 and 91) as one that had been established following enactment of the PAEA "for consideration of minor editorial revisions and technical corrections to the MCS." Docket No. MC2011-5, Order Approving Mail Classification Changes (Order 667), February 8, 2011, at 2.

The Commission approved the proposal, noting that the change would promote deeper dropshipping and presorting of Periodicals, reduce the number of Periodicals in sacks, and increase the number of Periodicals on pallets. *Id.* at 5. Moreover, the Commission addressed several points raised by the Public Representative that are germane to this case, including the Public Representative's position that the case had not been filed under the appropriate set of rules. With respect to this concern, the Commission stated:

³ See Docket No. MC2011-5, Notice of the United States Postal Service of Classification Change Related to Combined Mailings of Standard Mail and Periodicals, November 5, 2010.

... one significant consideration is that presently no other category in the Commission's rules suits the nature of this request, which involves preparation changes and limited adjustments to postage assessment. This means that the data and information that otherwise would accompany filings under those categories might not yield information directly on point, might produce information that is not needed, or might require motions for waiver. The Commission has employed rule 3020.90 *et seq.* to accommodate review of Postal Service requests when an appropriate filing category is not apparent. While this process has worked reasonably well, the Commission will take under advisement the need to consider revising its rules to address proposals that fall between mere technical corrections to the MCS and rate and product changes.

Id. at 5. (Internal citations omitted.)

The Commission also said it shared the Public Representative's concern that the proposal, as originally filed, lacked adequate supporting information. (The Public Representative, in fact, said the Postal Service's "scant" filing consisted of a two-paragraph notice and an attachment with two new sentences for the MCS.) Docket No. MC2011-5, Comments of the Public Representative, November 24, 2010, at 2. The Commission established the following standard: "Until (and if) the Commission adopts regulations regarding hybrid proposals such as the one before it in this proceeding, the Postal Service is requested to include in its initial filing sufficient detail to adequately support its proposal. Doing so will expedite analysis and facilitate informed public participation." Order No. 667 at 5-6. (The Commission also noted the Postal Service had provided supplemental data and information in response to an information request.)

Id. at 6.

In Docket No. MC2011-28, the Postal Service sought subpart E consideration for two proposed changes to the MCS. One was a global replacement of references to "Lightweight Commercial Parcels" to "Commercial First-Class Package Service; the other was a narrowing of the Commercial First-Class Package Service letter prohibition to cover only the Commercial Base portion.⁴

⁴ Docket No. MC2011-28, Notice of Minor Classification Change, August 12, 2011.

In Order No. 835, the Commission noted that this case had been filed pursuant to the Commission's procedures under 39 CFR 3020.90 *et seq.*⁵ The Commission noted that the Public Representative argued that by filing under 39 CFR 3020.90 *et seq.* rules, the Postal Service's Initial Notice lacked sufficient supporting justification, and believed the Commission should promulgate rules for addressing the Postal Service's classification change proposals that fall between "scrivener's errors" and the addition, removal, or transfer of products on the product list. Order No. 835 at 7.

The Commission said it agreed with the Public Representative that the Postal Service's Initial Notice had not contained sufficient information to allow interested persons or the Commission to make an informed decision on the appropriateness of the proposal, and said this had resulted in several rounds of questions and pleadings, placing unnecessary additional burden on all parties as well as the Commission's resources. *Id.* Significantly, the Commission said that while both the Postal Service and Public Representative suggest that the Commission's 39 CFR 3020.90 *et seq.* rules do not perfectly fit the filing, it believed that they could form an appropriate mechanism for dealing with such situations. *Id.* However, it said that for proposals such as this to be effectively analyzed under 39 CFR 3020.90 *et seq.*, the Postal Service must provide more information about the proposed changes, similar to the level of information that had been provided in the Service's subsequent filings. *Id.* at 7-8. The Commission observed that sufficient information (from the outset) is particularly important given that the Commission's 39 CFR 3020.90 *et seq.* rules provide an extremely short time period for interested persons and the Commission to act. *Id.* at 8.

The Commission concluded by saying that it would continue to monitor the situation in future cases and notices under 39 CFR 3020.90 *et seq.* It also said that if it found that its rules were not working effectively, it would consider adding new

⁵ Docket No. RM2011-28, Order Regarding Commercial First-Class Package Service, August 31, 2011 (Order No. 835).

regulations applicable to classification changes that rise above the level of “corrections” to the MCS. Order at 7-8. (Internal citation omitted.)

In Docket No. MC2012-8, the Postal Service filed a one-and-a-half page Notice under Subpart E, describing the proposed change as one that concerned the requirements a mailer must meet to qualify for a Global Expedited Package Services contract. More specifically, the Postal Service was proposing to raise the minimum dollar amount required to qualify for a GEPS contract. It stated:

The classification language for the GEPS product would be modified to state that, 'To qualify for a contract a mailer must be capable, on an annualized basis, of paying at least \$200,000.00 in international postage to the Postal Service,' rather than \$50,000.00. This change is designed for consistency with published commercial plus pricing discounts for Express Mail International (EMI) and Priority Mail International (PMI).

Notice of the United States Postal Service of Minor Classification Change, January 30, 2012, Docket No. MC2012-8. at 1.

The Commission approved the change, and in doing so addressed objections raised by the Public Representative. As shown below, in this instance, the Commission viewed the competitive nature of the underlying product as a factor affecting its decision:

Notices filed pursuant to 39 CFR 3020.90 *et seq.* must be relatively minor in nature and may not entail modifying either the market dominant or the competitive product list. A more comprehensive procedure, however, must be followed if the Postal Service wishes to add a product to either the market dominant or competitive product lists, remove a product from one of the lists, or transfer a product from one list to the other list. 39 CFR 3020.30. The Public Representative does not claim that this proposed change falls into any of the categories set forth by 39 CFR 3020.30. Rather, he states that the Commission should not consider the modification as a minor change because it will

reduce the access of small- and medium-size businesses to the GEPS product and change the cost or market characteristics of the GEPS product.

While the Commission is mindful of the potential impact of the proposed change on smaller shippers, the proposal concerns a competitive product. Shippers not eligible for GEPS contracts possess the option of selecting commercial alternatives. The Commission's obligation under 39 CFR 3020.93 is to determine whether the proposed change is inconsistent with 39 U.S.C. 3642. The Public Representative does not allege, and the Commission does not find, that this modification is inconsistent with the requirements set forth in that statute. Accordingly, the Commission accepts the change specified in the Postal Service's Notice and shall make conforming modifications to the draft MCS.

Docket No. MC 2012-8, Order No. 1225, Order Approving Mail Classification Change, February 10, at 3.

III. SUMMARY OF ISSUES AND REMANING DISCUSSION

As indicated above, the threshold issue in a filing premised on subpart E is whether the proposal qualifies for subpart E treatment, either as a "correction" that does not constitute a change to the product lists — or as change that fits within the administrative interpretation the Commission has articulated in several orders since adoption of subpart E.⁶ If the answer is "No," the Commission has several options. One is allowing the Postal Service refile the case under another set of rules, with additional documentation.

On the other hand, if the answer is "Yes," the next question typically is whether the filing supports a Commission finding that the proposals are "not inconsistent" with 39 U.S.C. § 3642.⁷ Section 3642 addresses new products and product transfers. If the

⁶ Order No. 2188 (at 2) refers to the Postal Service's inclusion of classification changes affecting two services as "a procedural matter." If the inclusion of more than one classification change in a subpart E filing would impede Commission review, the Commission, among other things, can request the Postal Service to submit separate filings.

⁷ The Commission may also seek additional information.

Commission finds no statutory inconsistency, it is to direct that the MCS be changed to reflect approval of the Postal Service's proposals (with editorial corrections, if appropriate), consistent with the effective date the Postal Service identifies. In the absence of such finding, the MCS is not changed. 39 C.F.R. § 3020.93(a).

IV. PROPOSED MCS CHANGES ASSOCIATED WITH RESTRICTED DELIVERY SERVICE (MCS 1505.15)

A. Postal Service's Proposal

Description. Restricted Delivery permits a customer to direct that delivery be made only to the addressee or the addressee's authorized agent.

MCS status. Restricted Delivery appears in a list of services under the Ancillary Services product. Ancillary Services, in turn, is part of the Special Services class.

Current customer access options. Currently, a customer may purchase Restricted Delivery only in conjunction with the purchase of one of the following services (each of which requires a signature upon receipt):

- Certified Mail
- Collect on Delivery
- Insured Mail (over \$200)
- Registered Mail (for use with certain postal products).

Proposed expansion. The Postal Service proposes allowing customers to purchase Restricted Delivery in conjunction with Signature Confirmation Service, if purchased using Click-N-Ship or through PC Postage vendors. See Notice at 1 and MCS 1505.15.1. In addition, this combination will be limited to use with parcels. Notice at 1, n. 2. The Postal Service states that notice will be provided to customers if it chooses to expand this option more broadly. *Id.*

Fees. The Postal Service states that the fees in MCS §§ 1505.15.2 and 1505.17.2 would apply. Notice at 1-2.

Rationale for subpart E treatment. The Postal Service seeks subpart E treatment for both of its proposals in this case on grounds that the proposed changes are minor in nature because they "merely expand access to previously approved rates and are not inconsistent with the provisions of 39 U.S.C. §§ 3622, 3633 or 3642." Notice at 2. In addition, the Postal Service observes that in analogous situations, the Commission has allowed classification changes that expand access to existing price categories to be filed under the minor classification change rules. *Id.* at 2-3. The Postal Service cites Docket No. MC2014-30, where the Commission approved the addition of 15 additional countries to the Priority Mail Express International product using the procedures under section 3020.90 *et seq.* *Id.* at 3. The Postal Service asserts that the present proposals are akin to the proposal approved in Docket No. MC2014-30, and are thus consistent with the procedures applicable to minor classification changes. *Id.*

Discussion. In terms of the threshold question, this proposal is not a "correction" or editorial revision in the conventional sense, nor does it rise to the level of a change to the product list. Instead, it appears to fit within the scope of the Commission's administrative interpretation. Thus, the question is whether the filing presents sufficient information to support a Commission finding that the proposal is not inconsistent with 39 U.S.C. § 3642.

In general, the filing appears to accurately describe the proposed change. Although this information is not essential to approval, it appears to explain why the Postal Service includes "as specified by the Postal Service" in its proposed MCS language. To date, the Commission has not sought additional information on this proposal. In the event the Commission concludes the record warrants supplementation, it can direct the Postal Service to file supplemental explanatory information as a condition of approval.

V. PROPOSED MCS CHANGES ASSOCIATED WITH PICKUP ON DEMAND SERVICE

A. Postal Service's Filing

Description. Pickup on Demand service is available from designated Post Offices. Currently, Pickup on Demand service is available to customers who ship at least one item from the following list of qualifying domestic and international postage-paid products:

Table V-1

Products Eligible for Pickup on Demand

Domestic:

Priority Mail Express

Priority Mail

Parcel Select

Standard Post

International:

Global Express Guaranteed

Priority Mail Express International

First-Class Package International Service

Notice at 2.

MCS status. In the MCS, Pickup on Demand is a rate category associated with various products.

Proposed expansion. The Postal Service proposes to expand the list of qualifying postage-paid packages to include the following domestic products:

Table V-2

Proposed Additions to Products Eligible

for Pickup on Demand

First-Class Package Service

First-Class Mail Parcels

Parcel Return Service

Media Mail/Library Mail

Bound Printed Matter Parcels

Source: *Id.* at 2.

Rationale for subpart E treatment. The Postal Service presents the same rationale for seeking subpart E treatment for both proposals: the changes are minor in nature because they "merely expand access to previously approved rates and are not inconsistent with the provisions of 39 U.S.C. §§ 3622, 3633 or 3642" and in analogous situations, the Commission has allowed classification changes that expand access to existing price categories to be filed under the minor classification change rules. *Id.* at 2-3.

B. Discussion

The undersigned agrees that this change is minor, and is not inconsistent with section 3642. At the same time, the Postal Service's classification change for Pick-Up on Demand raises issues similar to those identified in the Commission's decision in Docket No. MC 2014-30. Specifically, the Commission observed that the classification changes "do not fit neatly into the § 3020.90 *et seq.* rules because the changes have the potential to add new volumes to the PMEI product, and thereby increase costs and revenues." [Citation omitted]. Order No. 2127 at 4. With respect to Pick-Up on Demand, the expansion of this service to other market dominant and competitive products has the potential to increase volumes, costs and revenues for the named products. The potential increase to each product's costs and revenues is not known, but any increase is likely to be small given the limited use of Pick-Up on Demand. Moreover, the Commission has an opportunity to explore any cost and revenue effects in future Annual Compliance Determination (ACD) reports.

Accordingly, the undersigned supports approval of this proposal.

VI. ADDITIONAL OBSERVATION

The Commission's administrative interpretation of subpart E has usefully filled a "regulatory gap" in the years since adoption of Part 3020. However, there continue to be questions at the outset of most subpart E filings about the appropriateness of the Postal Service's invocation of this category and the adequacy of the information presented for filings that are not mere corrections in the conventional sense, such as a typographical error. The Commission has recently revisited the price cap rules in Part 3010, which were included in the rulemaking in which Part 3020 was adopted. It would be consistent with the interests of the general public if the Commission would also revisit Part 3010 when resources permit. This would reduce or eliminate disputes over the scope of subpart E, provide clear direction to the Postal Service, and promote administrative efficiency.

Respectfully submitted,

Patricia A. Gallagher
Public Representative
901 New York Ave NW Suite 200
202-789-6824
pat.gallagher@prc.gov

James F. Callow
Office of Accountability and
Compliance

Dated: September 29, 2014

39 C.F.R. Part 3020, Subpart E—Requests Initiated by the Postal Service to Change the Mail Classification Schedule

§3020.90 General.

The Postal Service shall assure that product descriptions in the Mail Classification Schedule accurately represent the current offerings of Postal Service products and services.

§3020.91 Modification.

The Postal Service shall submit corrections to product descriptions in the Mail Classification Schedule that do not constitute a proposal to modify the market dominant product list or the competitive product list as defined in §3020.30 by filing notice of the proposed change with the Commission no later than 15 days prior to the effective date of the proposed change.

3020.92 Public input.

The Commission shall publish Postal Service submissions pursuant to §3020.91 on its Web site and provide interested persons with an opportunity to comment on whether the planned changes are inconsistent with 39 U.S.C. 3642.

§3020.93 Implementation.

(a) The Commission shall review the proposed changes to product descriptions, and the comments thereon. So long as such changes are not inconsistent with 39 U.S.C. 3642, the Commission shall, subject to editorial corrections, change the Mail Classification Schedule to coincide with the effective date of the proposed change.

(b) The Commission's finding that changes to the product descriptions are not inconsistent with 39 U.S.C. 3642 is provisional and subject to subsequent review.